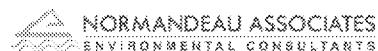


MA DEP INITIAL RESPONSES TO “GENERAL” USEPA COMMENTS

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MA DEP INITIAL RESPONSES TO "GENERAL" USEPA COMMENTS:

1. Revised DO Criteria will be integrated with other MA DEP surface water quality program elements.
2. DO criteria for SA and SB Waters can be identical (given that SA criteria "control")
3. Revised DO Criteria will be consistent with MA DEP's anti-degradation policy
4. Revised DO Criteria will not cause inconsistencies with USEPA anti-backsliding policies and regulations and Clean Water Act



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1. Revised DO Criteria will be integrated with other MA DEP surface water quality program elements

- Comprehensive Mount Hope Bay Estuary monitoring strategy is under development with USGS which is key to implementation
- MA DEP surface water quality rules will be amended to include revised DO Criteria (once approach is established)
- Then, CALM procedures, etc. will be revised to apply new DO criteria.

2. DO criteria for SA and SB Waters can be identical (given that SA criteria “control”)

- For DO criteria, if $SB = SA$ and SA is protective then SB will also be protective
- For some other MA DEP surface water quality standards $SA=SB$ with no issues
- For DO, $SA = SB$ in Ct and RI with no issues
- DO criteria using Virginia Province Approach will be different than existing criteria but consistent with the Clean Water Act (as in other “VPA” states)

CMR 314.05 (4) COASTAL AND MARINE CLASSES SA and SB DEFINITIONS:

Class SA. These waters are designated as an **excellent habitat for fish, other aquatic life and wildlife, including for their reproduction, migration, growth and other critical functions, and for primary and secondary contact recreation. In certain waters, excellent habitat for fish, other aquatic life and wildlife may include, but is not limited to, seagrass.** Where designated in the tables to 314 CMR 4.00 for shellfishing, these waters shall be **suitable for shellfish harvesting without depuration (Approved and Conditionally Approved Shellfish Areas)**. These waters shall have **excellent aesthetic value.**

Class SB. These waters are designated as a **habitat for fish, other aquatic life and wildlife, including for their reproduction, migration, growth and other critical functions, and for primary and secondary contact recreation. In certain waters, habitat for fish, other aquatic life and wildlife may include, but is not limited to, seagrass.** Where designated in the tables to 314 CMR 4.00 for shellfishing, these waters shall be **suitable for shellfish harvesting with depuration (Restricted and Conditionally Restricted Shellfish Areas)**. These waters shall have **consistently good aesthetic value.**

3. Revised DO Criteria will be consistent with MA DEP's anti-degradation policy

- Revisions are to apply Virginia Province Approach or equal to "modernize" criteria based on newer science and EPA approach (existing saltwater DO criteria have been in place for decades)
- New criteria would be different but consistent with the Clean Water Act (hence no antidegradation issues)
- In Region 1, RI and CT have made similar changes to adopt VPA approaches for estuarine DO criteria in Region 1 with no antidegradation issues

MA DEP's anti-degradation policy rules, 314 CMR 404, 4.04

Four water protection "tiers":

(1) **Protection of Existing Uses.** *In all cases existing uses and the level of water quality necessary to protect the existing uses shall be maintained and protected."*

(2) **Protection of High Quality Waters.** *High Quality waters are waters whose quality exceeds minimum levels necessary to support the national goal uses, low flow waters, and other watersThese waters shall be protected and maintained for their existing level of quality unless limited degradation by a new or increased discharge is authorized*

(3) **Protection of Outstanding Resource Waters.** *.... These waters include other waters as determined by the Department based on their outstanding socio-economic, recreational, ecological and/or aesthetic values. The quality of these waters shall be protected and maintained.*

(4) **Protection of Special Resource Waters.** *Certain waters of exceptional significance, such as waters in national or state parks and wildlife refuges, may be designated by the Department... as Special Resource Waters (SRWs). The quality of these waters shall be maintained and protected so that no new or increased dischargethat would result in lower water quality in the SRW may be allowed*

4. Revised DO Criteria will be consistent with USEPA anti-backsliding policies and regulations

- Theoretical future permit relief would require:
 - Elimination of "reasonable potential" that impairments exist (based on "multiple lines of evidence" as in developing permits)
 - Resolution of all contaminants/impairments (DO and nitrogen, phosphorus, chlorophyll, & hypoxic zones)
 - Removal of waters from 303(d) list by MA DEP (i.e., attainment of surface water quality standards)
- Without all these, water quality conditions would not justify less stringent permit limits
- Conclusion: No "backsliding" on NPDES permits in the foreseeable future

Anti Backsliding Flow Chart (from USEPA NPDES Permit Writers Manual)

